

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL
FILE
ORIGINAL

In the matter of

Amendment of the Commission's
Rules To Permit FM Channel and Class
Modifications by Application

) MM Docket # 92-159
)
)
)
)

RECEIVED

OCT - 5 1992

To : Ms. Donna R. Searcy
Secretary
Federal Communications Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS

1. Bromo Communications, Inc ("Bromo"), a Broadcasting Technical Consulting and Engineer firm herein submits its comments in the above referenced matter.

BACKGROUND

2. This Commission presently has before it for consideration a change in its regulations which would allow permittee's and licensee of commercial FM channels (hereinafter referred to as "Station") to upgrade facilities by the filing of an application, rather than the initial filing of a Petition for Rule Making ("PRM") followed by the issuance of a Notice of Proposed Rule Making ("NPRM") and an application.

No. of Copies rec'd _____
List A B C D E _____
0 + 5

3. Under the proposal, the Commission will allow the Station to upgrade facilities on adjacent channels to a higher Class , a lateral change of Class to another adjacent Channel or a downgrading of an allotment to an adjacent channel. None of these potential changes can be made presently, by virtue of filing an application. A PRM must first be proposed, and following its successful conclusion an application to effectuate the changes must then be submitted for consideration. This instant proceeding would allow for a one step process and eliminate the duplication of review of certain engineering matters, by both the Commission's Allocations and FM branches.

PROPOSAL

4. The Commission specifically proposes to allow stations to either upgrade (or downgrade) their allotment provided there is a co-channel or adjacent channel (protected) relationship to the existing allocation, and there are no other required changes to the Commission's table of FM allotments, §73.202(b). ¹ By application, FCC Form 301, it must be demonstrated that the facility can meet current §73.207(b)(2) spacing requirements from the proposed site and comply with §73.313, while providing 100% coverage of the community of license with a 3.16 mV/m contour.

1) Downgrading an allotment was authorized in MM Docket #88-118, 4 FCC Rcd 2413 (1989).

5. As an alternative, the Commission will consider an application, which seeks to utilize this new one step process at either a shortspaced site utilizing §73.215 rules or with less than 100% community coverage. This is provided that there is a site available at which the minimum distance separation requirements of §73.207(b)(2) are met, or which provides complete community coverage.

6. The Commission also asks how the changes contemplated herein would be used in relationship to recent changes, enacted in MM Docket #91-348, FCC No. 92-329, adopted July 16, 1995, which provide for cut-off protection for applications to prevent conflicts between applications and new rule making proceedings.

DISCUSSION

7. We agree it would be beneficial for stations to be allowed to upgrade (or downgrade) on protected channels. In a footnote in the Notice of Proposed Rule Making ("Notice"), the Commission referenced that adjacent channels were the three channels immediately above and below the existing allotment. While §73.207(b)(2) would preclude their use by any other facility, the same section would prevent the use of frequency separated by 10.6 and 10.8 Mhz, Intermediate

Frequencies ("IF"). While there are only few cases that we have found where IF channels are available for use by the respective stations, it is possible that a station may be able to improve its facilities by relocation to the IF channel. These additional channels should be considered as protected channels, which would enable a facility to improve itself by relocating to the IF channel.

8. The Commission specifically noted that it would allow use of these new regulations only where the station's allotment would be changed. Since the Commission now considers a change of a station's community of license to be a protected change, the proposed regulations may accommodate this type change as well. While this will cause the equities of one community over another to be reviewed by the FM Branch, rather than the Allocations Branch, it will remove the duplications of other engineering reviews by both staffs. Since the Commission requires any change of community to be mutually exclusive with a station's allotment, and only that allotment would be effected, this type of change should be possible through the filing of an application. Thus, all protected allotment changes could be addressed through the application process.

9. The Commission, in the Notice, said it would not consider off channel (non-adjacent) upgrades, since that

would invoke the potential of competing expressions of interest which were best addressed through the standard rule making procedure. In some cases, not limited to Class A's, a station could move (laterally) to another non-adjacent Class A channel thus enabling the station to eliminate pre-existing shortspaces and allow a maximum Class facility. In these cases, the station could be allowed to make use of the one step process, provided an additional equivalent channel was available and is so demonstrated. If an expression was received, it could become the subject of a Rule Making Proceeding, through the issuance of a separate notice. This allows for a quicker implementation of improved service for an authorized facility, rather than delaying the implementation of improved service, merely for the purposes of considering the merits of the parties offering separate expressions of interests. The application which would propose this type of change would, as all applications, be acknowledged by the Commission on a public notice, which would demonstrate the availability of the alternate channel, soliciting other expressions of interests, which in turn would be considered through a routine NPRM.

10. Comment was also solicited as to the procedure to allow stations to utilize these new regulations, specific regulations which to date have been reserved for use in applications only, not for allocation purposes. If a station was able to demonstrate there was sufficient usable area for

the allotment, meeting all allocation criteria, there should be no reason not to consider the application on its own merits. This type of situation presently occurs, when a usable area for a new allotment is shown which meets the allocation criteria, and following the allotment of the channel, the application specifies a site utilizing §73.215 (contour to contour) regulations, or other application tools.

11. The utilization of these regulations for the purposes of an application would allow for facility changes, while considering real world problems of Federal Aviation Administration clearance, state and local zoning considerations, etc. If there exists an area to locate a transmitter site for a station, which meets the Commission's allocations criteria, the Station should be able to propose a site which is buildable. The public interest is served by eliminating wasteful and time-consuming human resources.

12. Further, these new regulations should be mandatory for stations seeking upgrades on protected channels, rather than the apparent option to go through the present PRM process. There have been cases where stations have gone through the upgrade procedure and have then failed to file the necessary application to effectuate the improvement or change. The vacant allotment then remains, while the existing facility continues to operate as previously authorized. This warehousing of spectrum is not in the

public interest since it can effectively prevent or delay the institution of expanded or improved service elsewhere. ² Only in those case where the new allotment requires other changes in §73.202(b), should the Stations be allowed to invoke the standard (present) PRM procedure. Further, should a construction permit, issued under these circumstances, expire, the affected station's allotment should revert to a lower class or the previous status as appropriate. This would also serve to limit warehousing of spectrum by stations not fully implementing their upgrades.

13. The utilization of these new regulations in conjunction with the recently approved regulations to remove conflicts between applications and rule making proceeding (MM Docket #91-348) will potentially limit the possibilities for non-productive counterproposals, thus enabling stations to improve their facilities with much less risk. This would be beneficial to the stations seeking upgrades, since at present there is an inherent risk of competing counterproposals which may ultimately be favored over an upgrade.

2. Channel 250C was allocated to Clearwater, Florida, MM Docket #88-501. No request for extension of time to file was made. No application was filed until June 3, 1992, when the licensee was questioned about intent to file due to conflicting rule making.

Allocated Channel 265C3 to Hazelhurst, Mississippi, MM Docket #89-411. No application was filed and no extension of time to file application was requested.

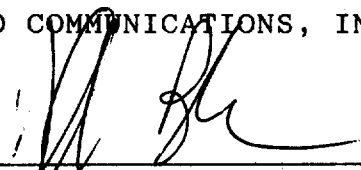
SUMMARY

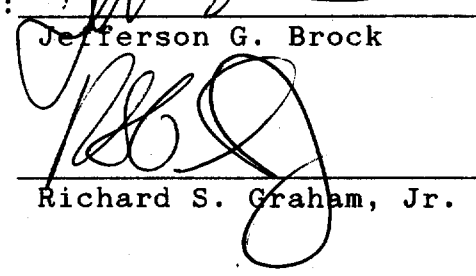
14. We favor the proposal to allow stations to upgrade their respective facilities by the filing of FCC Form 301, rather than going through the two-step process. This will allow for faster implementation of upgrades and reduce the duplication of review by the staff. We request that protected channel changes, as outlined above, be allowed under these new regulations, including a change of community of license. Likewise, the combination of these proposed rules, in conjunction with the cut-off protection afforded in MM Docket #91-348, will enable for a more efficient use of the Commission's resources, will allowing for expedited institution of improved service and provide reasonable protection to the upgrading station from counterproposals.

Respectfully submitted,


BROMO COMMUNICATIONS, INC.

By:


Jefferson G. Brock


Richard S. Graham, Jr.

Sworn to and subscribed before
me this the 2nd day of October, 1992.


Notary Public, State of Georgia
My Commission Expires: September 8, 1995